PHG Twinsburg, OH

## UNITED STATES OF AMERICA

## BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE AMERICAN BOTTLING COMPANY, INC. d/b/a DR. PEPPER SNAPPLE GROUP

and

Case 8-CA-39327

TEAMSTERS LOCAL UNION NO. 293 a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS Charging Party

and

TEAMSTERS LOCAL UNION NO. 348
a/w THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
Party to the Contract

and

TEAMSTERS LOCAL UNION NO. 1164 a/w THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS Party in Interest

## ORDER DENYING MOTION FOR RECONSIDERATION

On December 29, 2011, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in this proceeding, finding that the Respondent violated Section 8(a)(2) of the Act by granting recognition to, and signing a collective-bargaining agreement

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<sup>1 357</sup> NLRB No. 167.

with, the Intervenor, Teamsters Union Local 348, at a time when Local 348 did not represent a majority of employees in the bargaining unit, and by granting the Intervenor access to employees for the purpose of soliciting membership/dues checkoff forms. The Board further found that the Respondent violated Section 8(a)(2) and (3) by deducting Local 348 dues from employee paychecks pursuant to the union-security clause of the contract. Thereafter, on February 2, 2012, Local 348 filed a motion for reconsideration. The Acting General Counsel and Charging Party, Teamsters Local Union No. 293, filed oppositions to Local 348's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its motion, Local 348 contends that *Dodge of Naperville*, 357 NLRB No. 183 (Jan. 3, 2012), which issued one week after the decision in the instant case, "implicitly overrule[d]" the precedent relied on by the Board in finding the Section 8(a)(2) and (3) violations. Local 348 asserts that "in light of the majority opinion in *Dodge of Naperville*, *Inc.*, the complaint in this case should be dismissed." We reject this contention.

The principal issue in *Dodge of Naperville* was whether a represented unit of 6 automotive mechanics remained an appropriate unit for bargaining after the employer closed the facility where they worked and transferred them to a nearby

facility where they worked with 14 nonunion mechanics. The Board found that because the employer unlawfully failed to bargain with the union over the effects of the merger of the two operations and implemented unilateral changes to employment terms of the six represented mechanics, the respondent "made it impossible to determine whether the [transferred] unit would have maintained sufficiently unique characteristics to remain an appropriate unit for bargaining." 357 NLRB No. 183, slip op. at 3. The Board concluded that under these circumstances, the employer could not lawfully withdraw recognition from the union, and it violated Section 8(a)(5) by doing so.

By contrast, unit appropriateness was not at issue in this case. It is undisputed that following the Respondent's closure of its unionized Akron and Maple Heights facilities, and its consolidation of operations at its new Twinsburg facility, there was a single Twinsburg unit, which included the three former bargaining units at the closed facilities. The only issue presented was whether any of the three Unions that had represented the pre-consolidation units possessed majority support among employees in the new Twinsburg unit. Because the evidence showed they did not, the Board found, under well-settled precedent, that the Respondent violated Section 8(a)(2) and (3) by recognizing Local 348 and executing a collective-bargaining agreement with it that contained a union-security

clause. See e.g., Metropolitan Teletronics, 279 NLRB (1986), enfd. mem. 819 F.2d 1130 (2d Cir. 1987).

Contrary to Local 348, the holding in *Dodge of Naperville* that the employer violated Section 8(a)(5), by failing to engage in effects bargaining and by withdrawing recognition from the union, did not affect the precedent relied on by the Board in the instant case that an employer violates Section 8(a)(2) and (3) by establishing a bargaining relationship with a union that lacks majority support.<sup>2</sup> Local 348's argument to the contrary is based largely on its contention that it possessed majority support among the Twinsburg unit employees. This argument was raised and rejected in the underlying proceeding.

Having duly considered the matter, we find that Local 348's motion fails to present "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

(Continued)

We find no merit in Local 348's argument that, regardless of the factual or legal issues presented, *Dodge of Naperville* broadly holds that where "effects" bargaining is available following a relocation and consolidation decision, an employer lawfully may continue to recognize and extend its bargaining relationship with a union, regardless of the relative sizes of the groups of employees coming together.

Member Hayes dissented in *Dodge of Naperville*, but he agrees that the majority's holding and rationale in that case has no applicability to the facts and issues in this case.

IT IS ORDERED, therefore, that the Intervenor's motion for reconsideration is denied.

Dated, Washington, D.C., April 24, 2012.

Chairman	Mark Gaston Pearce,
Membe:	Brian E. Hayes,
Membe:	Richard F. Griffin, Jr.,
BOARD	NATIONAL LABOR RELATIONS

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